

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Broadcast Localism

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MB Docket No. 04-233

**REPLY COMMENTS OF
AMERICAN FEDERATION OF MUSICIANS,
AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS,
FUTURE OF MUSIC COALITION,
THE RECORDING ACADEMY,
RECORDING ARTISTS' COALITION**

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The Recording Artist Groups – consisting of the American Federation of Musicians, American Federation of Television and Radio Artists, Future of Music Coalition, The Recording Academy, and the Recording Artists' Coalition – hereby submit the following Reply Comments in response to Comments filed in the Federal Communications Commission (FCC) Notice of Inquiry (NOI) Docket No. 04-233, adopted June 7, 2004.

The following Reply Comments were developed by a broad coalition of organizations that are concerned with the rights of recording artists, and that represent hundreds of thousands of individual music professionals.

The American Federation of Television and Radio Artists (“AFTRA”) is a national labor organization representing approximately 80,000 performers and newsmen that are employed in the news, entertainment, advertising and sound recording industries.

AFTRA's membership includes more than 11,000 recording artists, including more than 4,500 singers who have a royalty contract with a record label and roughly 6,500 singers who are not signed to a royalty contract.

The American Federation of Musicians of the United States and Canada ("AFM") is an international labor organization composed of over 250 Locals across the United States and Canada, with over 100,000 professional musician members. AFM members perform live music of every genre and in every size and type of venue and include tens of thousands of musicians actively involved in recording music as featured artists or studio musicians.

The Recording Artists Coalition ("RAC") is a nonprofit coalition formed to represent artists with regard to legislative issues and to address other public policy debates that come before the music industry.

The Future of Music Coalition ("FMC") is a nonprofit organization that identifies, examines and translates the challenging issues at the intersection of music, law, technology and policy for musicians and citizens.

The Recording Academy[®], known internationally for the GRAMMY[®] Awards, is an organization of thousands of singers, songwriters, musicians, producers and engineers. The Academy's GRAMMY Cultural Policy Initiative advances the rights of the music community through advocacy, education and dialogue.

INTRODUCTION

By this Notice, the Commission seeks comment as to whether and how broadcast stations are fulfilling their core obligation to serve the interests and needs of local communities and what measures the Commission should take to ensure that broadcast stations operate to promote localism.¹

Upon reviewing the comments filed, the Recording Artist Groups are struck by the protestation by some against this proceeding itself. The comments of the National Association of Broadcasters state that they oppose this Notice of Inquiry altogether, asserting that this effort to merely explore the concerns regarding localism are inconsistent with the intent of Congress' 1996 Telecommunications Act, which established a "pro-competitive, deregulatory telecommunications framework."² They also state that no evidence exists to justify a shift away from the Commission's deregulatory approach. The NAB's comments rest on the well-worn economic premise that "competitive marketplace forces are enough" and that their commitment to local service is expressed every day through their audience ratings. To paraphrase: "If we weren't serving our communities," they say, "then consumers wouldn't be tuning in."

For the broadcasters to protest the Inquiry itself runs counter to the prevailing sentiments of many organizations and citizens themselves. We need not look farther back than the Media Ownership Rulemaking to understand that millions of citizens are deeply

¹ Notice, Paragraph 7.

² Comments of the National Association of Broadcasters, p. i.

concerned about the state of media and communications in America. We view localism as a core, fundamental issue. It is, indeed, one of the basic obligations of licensees and one that reflects most accurately the fundamental value of broadcast radio in a community. As such, we applaud the Commission for setting up the Localism Task Force and creating this NOI.

In this Reply Comment, Recording Artist Groups focus on three areas in which the Commission sought input, and which broadcasters and citizens have filed comments:

1. Local musicians' concerns about local programming and access to radio;
2. The existence and impact of "pay for play" business practices; and
3. The domination of centralized programming masquerading as local programming through insidious group owner innovations such as voice-tracking.

This Reply Comment also includes excerpts of comments filed by citizens, broadcasters, on-air talent and musicians in this proceeding. The excerpted responses contain factual information as well as views and opinions of individuals, each of whom are identified by name. While the Recording Artist Groups cannot attest to the accuracy of each response submitted by these individuals, we believe that circumstances described in the responses as well as the conclusions articulated therein represent responsible and well-considered music industry concerns regarding the current commercial radio market.

Recording Artist Groups support this NOI and applaud the Commission's reaffirmation that its overarching goal is to ensure that broadcast stations are responsive to the unique interests and needs of local communities. But it must be repeated at the outset – *media ownership matters*. It is simply impossible to discuss how to promote localism without consideration of the consolidated ownership patterns emerging throughout this country.

Although the opportunities for a rulemaking to put the consolidation “genie back in the bottle”³ may be few, Recording Artist Groups urge the Commission to adopt rules and meaningful enforcement mechanisms to reform the destructive practices that exist today in television and radio broadcasting.

This Notice of Inquiry into Localism in Broadcasting is an important proceeding that will help establish the kind of substantive record that is necessary for the Commission to continue to effectively regulate broadcast radio. We also hope this proceeding can help the Commission to reconfirm its commitment to the core principles of localism, competition and diversity as it moves forward on building regulatory frameworks for managing emerging technologies.

³ Copps, Michael, “Crunch Time at the FCC”, *The Nation*, January 16, 2003.
<http://www.thenation.com/doc.mhtml?i=20030203&s=copps>

I. THE IMPORTANCE OF LOCALISM

Promoting localism means ensuring that local communities can rely upon their local television and radio stations to deliver local news, which includes, among other things, local political coverage, local weather, and local community affairs. Comments from the National Association of Broadcasters, Clear Channel, Entercom and others focus on their stations' commitment to delivering these valuable local services to their audiences.

However, promoting localism also requires that broadcast stations reflect and create opportunities for local artists and create avenues for other forms of local self-expression. As was shown in presentation after presentation at the hearings sponsored by the Commission's Localism Task Force over the past sixteen months and in comments filed in this NOI, the market forces created by the current, overwhelmingly consolidated broadcast media industry simply fail to provide the necessary incentives to promote these aspects of localism. Indeed, the market forces driving the broadcast industry today instead promote the opposite – centralized, homogenized, and uniform programming conceptualized and operated without the input or participation of individuals who live in the local communities to be served.

The core debate is not whether radio broadcasters have some local content. Most, in fact, do program some amount of local content (albeit often on a diminishing basis) in the form of traffic reports, weather, or news. The debate is whether the transition away from local to regional and national ownership structures has significantly impacted the amount

of local content and the ability for local citizens to make use of local airwaves.

Specifically, from the standpoint of local recording artists and listeners alike, the debate should focus on whether limited playlists featuring national acts serves the public interest or creates unfair barriers for access to radio.

II. CITIZENS SUPPORT LOCALISM AND LOCAL PROGRAMMING

In this NOI, the Commission has asked how to define localism and local programming.

While this Group understands the difficulty in creating a definition or requirement that fits all situations, we do believe that stations should be programmed locally, meaning that the content of the material being played or aired should be chosen by individuals that have recognizable connections in that community.

A number of musicians, producers, managers and on-air talent filed comments on this question, which articulate similar points:

Ted Killian – Medford, OR
Musician, recording artist

"Local programming" should mean nothing less than programmed by locals. The programming should be done by people with an actual stake in the community they serve -- not by someone in an office on the other side of the continent reading a sheet of statistics on what people in our region may or may not like to hear (but are going to hear anyway if we like it or not). Additionally, all radio broadcasts should contain some percentage of local CONTENT as well. Local programs are as important as local programming. There are two aspects to the issue of "localism."

Geoffrey Begey – Wichita, KS
Musician and music fan

Radio, which used to support music, has in turn killed it. Music isn't about music. Music is about money. And corporate radio helped make it that way.

I'm not sure how the FCC should define local programming, but I know what local programming ISN'T. And it ISN'T syndicated radio programs. That's just lazy. All they have to do is put a tape in or beam in the satellite signal or whatever it is that they do, and go back to their coffee.

Also, local programming ISN'T commercials. That's usually the only local programming I hear. Syndicated shows and local commercials. That's radio of today.

Kyle Bronsdon – Van Nuys, CA
Independent jazz musician

Due to the pressure on music directors and DJs at radio stations in both large and small markets, local programming must be defined. So-called "market forces" are contrived by the very entities that should serve these markets, creating a feedback loop by defining tastes through repetition and narrowly focused stylistic range which is then touted as "what the people want" and fed back to the public as popular. This has been the case with commercial radio for years and is, in all radio, increasingly diminishing the diversity of voices and protection against monopolies promised in the 1996 Telecommunications Act.

The FCC needs to ensure that all programming decisions are made at the local level by adopting a definition of local programming that measures locally originated and produced programming, and include provisions that include small independent content providers from other communities.

All programming should count as local programming, from news and public affairs to culture and especially music. Again, the decisions regarding all of this content should, in its entirety, happen on the local level.

Recording Artist Groups urge the Commission to evaluate how local stations are programming content to serve their communities. Specifically, stations should be

required to regularly document how they are serving the community and, in the case of music stations, their efforts to promote local artists. These filings should specifically focus on the inclusion of local artist specialty shows into weekly schedules, methods undertaken to promote local shows, concerts, and non-music local activities, steps taken to encourage playing local artists, and the number of instances where local artists were added to regular playlists. Further, these files should be available to the public and should be reviewed at least at the time that a station applies for a license renewal, with non-renewal as the penalty for non-compliance.

III. PERFORMERS AND RECORDING ARTISTS REMAIN CONCERNED ABOUT ACCESS TO RADIO

Radio stations hold enormous power in the music industry. Significant airplay can boost record sales, concert attendance, and an artist's cultural legitimacy. Radio airplay is also crucial for songwriters, as is it a source of revenue from performance royalties via ASCAP, BMI and SESAC.

However, access to radio airplay remains extremely limited for the vast majority of musicians. The Commission has received comments for several years that consolidation of commercial radio has led to three types of institutional barriers that limit the ability for local or independent artists to access playlists, even when these artists are recognized by critics or fans as being worthy of airplay.

The core barrier is that musicians who do not participate in the major label distribution and marketing systems are limited in their ability to garner significant commercial airplay.

The second barrier is that the recent consolidation of ownership has moved ultimate decision-making away from a relatively diverse group of locally-based programmers and DJs who are responsive to their communities in favor of large national or regional decision-making driven fundamentally at a regional or national level.

Third is the concern about the impact of radio station consolidation on more unique radio formats such as jazz, classical, Tejano and bluegrass. While many of these formats are not as commercially viable as other formats, they are invaluable in the preservation of American culture, and to the thousands of musicians and performers that participate in these music communities. It's important for the Commission to understand the trends in music and cultural radio programming, and promote forms of localism that also embrace and honor the most unique parts of American musical culture.

It is clear from the comments filed in this proceeding that musicians remain deeply concerned and frustrated about their access to radio airplay. Some musicians complain that stations that were once approachable have abandoned local talent. Others speak of the "deals" that are proposed in exchange for airplay, from expectations about free concert appearances to the purchase of ad time on the station. These stories affirm our

concern that commercial radio airplay is based not on merit, but on economic decisions that are often made at a much higher level.

Alex Whitmore – Denton, TX
Musician and songwriter

We have one community radio station that only plays my genre of music 2 hours a day 5 days a week. This is for the whole Dallas/Ft Worth area. I feel shut out most of the time because the large commercial radio stations are totally inaccessible to independent artists.

I play 3 to 4 nights a week. I have had limited airplay on the "mom and pop" radio stations around Texas. I feel like if I have more access to radio my following would increase significantly. I write songs about Texas, but my songs get played much more over seas than right here in Texas. It is strictly because there are just a few stations that are willing to play independent artists.

Ginny Bales – North Branford, CT
Musician

I am a professional musician and have played or sung on 7 independently produced albums during my career. I have also played between 60 and 120 live gigs per year from the 1980s until the present. Back in the 70s and 80s, I got occasional airplay from local stations, sometimes played live on local broadcasts, and did interviews in connection with touring. This was only possible because there were local programs that served local audiences.

In more recent years, I have not had these experiences and my general sense is that the local radio market no longer exists in the same way for musicians. In fact, I no longer listen to music on the radio at all – the stations I used to like have gone to talk radio or “national playlist” formulae and their choices of music don’t interest me in the slightest. The radio industry has become much less responsive to local markets and the national homogenization has led to a “lowest common denominator” situation which is harmful to musicians, and restricts our musical culture and the fertility of our national expression!

No one will look back on these recent years as years of great creativity in music and part of the reason is the drying up of

income streams for professional musicians. Loss of airplay for smaller record labels and the virtual impossibility of a DJ or station introducing a new artist or record (as happened with Elvis in the 50s and Simon and Garfunkel in the 60s) is leading to a smaller pool of talent and necessity for larger investment in order to “break” a new artist. This increased “corporate” involvement in the music industry is not producing better quality music nor major artists of greater stature. On the contrary, the difficulty of making a living is driving musicians out the business of music. We cannot have a vibrant musical scene in this country when musicians cannot make a living on a daily basis!

Increased centralization of power in the radio industry is not good for the overall musical scene in the USA.

Seth Kibel – Pikesville, MD

Professional musician: jazz, swing, Klezmer

Needless to say, as someone who specializes in genres of music that are not part of the mainstream, it is exceedingly difficult to get airplay. On a few, smaller independent stations there are a handful of "specialty" shows which will play my recordings, but these are few and far between. There are simply almost no outlets for airplay for music such as acoustic jazz, klezmer, world music, etc. This is largely due, I'm certain, to consolidation in radio station ownership as well as the nationalization of playlists.

If more radio stations could devote at least SOME of their airtime to local music, it would help local musicians such as myself build a base of support in their home region. Lots of people in the Baltimore/Washington area come to hear me play live in local venues -- why can't they hear me play on their local radio stations?

Cathy Fink – Kensington, MD

Musician

I have been a professional musician for 30 years playing folk, country and children's music. I have 9 GRAMMY nominations and a GRAMMY Award, plus a catalogue of over 30 recordings. I have recordings with Rounder Records as well as my own small label, Community Music, inc.

These days, independent music is getting scarce on the radio. Most National Public Radio stations where independent labels and

artists used to get airplay have replaced their local programming with talk shows. I believe the airplay on Public radio for this music has dropped by 75% in the last 10 years. Without a major label or a giant promotional budget to bribe other stations, the chances of airplay are slim these days. This has left a giant hole where a lot of excellent music programming used to be. Public radio served it's members well when it played new artists, new songs, both local and national. It supported the cultural community it lived in. That is now gone.

Radio station DJs filing comments in this proceeding also mention the constraints placed on DJs regarding what's played, especially related to local musicians:

Joel Clyde – Chatsworth, GA
Former radio DJ, performing songwriter and musician

When I was a DJ at KICM-105.7 FM, in Ardmore, Ok., we had strict order NOT to play anything that was not on the R & R charts. You would be fired if you played anything from a local or independant artist. This was in 1991, 92, 93 and 94. Most network affiliates that I know about have the same rules.

Steve Day – Olney, MD
Radio and television broadcaster
Currently working for WARW, Washington, DC

Music- As music director I could never, ever add a local artist. It must be approved by the Corporate Consultant.

The comments in this record reflect a broad disconnect on this critical point – while artists maintain that they have little access to local airwaves, broadcasters point to specialty shows focused on local music as an available platform. But although musicians agree that local music showcase programs have value, we challenge the perception that may lead to (or that may result from) such programming, i.e., the perception that local or independent music is not worthy of integration into a station's regular playlist. Our

strong belief is that songs should be programmed (and included in testing pools) based on the worth of the song and the potential for it to engage an audience, not artificial barriers like the label that released it or the marketing budget attached to it.

IV. PAY FOR PLAY

Recording Artist Groups have filed numerous comments and documents in the past regarding payola and pay for play. We believe that any barriers to worthy independent and local artists to access the commercial airwaves are wrong, as a matter of equity, fair trade and serving consumers.

In its comments, Clear Channel states that it has no ties with independent promoters and has a zero tolerance policy on payola.⁴ Clear Channel has stated publicly that it has stopped working with independent promoters, an action that was recently echoed by Cox and Infinity. However, many citizen commenters talk about the abundance of nuanced relationships, deals, and quid pro quo arrangements that act as a *de facto* form of payola, and how much money influences access to radio.

Take, for example, the words of these three music industry executives that filed comments in this NOI:

Bill Siddons – Sherman Oaks, CA
Manager of multi-platinum and developing artists

Payola is institutional these days. Record companies provide financial rewards to stations that support their records. Paying

⁴ Comments of Clear Channel Communications, pp. 31-32.

for "promotions" is the easy example. Indie promo exists to serve the needs of the stations and their decision makers. Need court side seats to the basketball game? Your kids school supported? A guaranteed job or "consultancy" if you're fired? Stick with me and add my records!

Simply, this is a cancer on our soul. It closes the door to local artists, beginning artists and anyone without the major financial clout of the major. And the major is controlling what the public hears by deciding what records in their own releases will be supported. Independent record companies cannot compete because they are not able to A. Push the "million dollar" button. or B. Support the indie promoters on a weekly basis, thereby losing in the battle of influence peddling.

Linda Edell Howard – Nashville, TN
Managing partner in a Music Row law firm

Payola lives and breathes bigger and deeper than ever before. It's just hiding as something else called t-shirts, tickets, promotions, contests, junkets. It has closed radio to anyone not willing to make the payment.

My direct experience lies with representing artists, songwriters and label executives, as well as radio personnel, and is attorney/client privileged information, but it exists and I hear about it daily.

David Kapp – Islandia, NY
Entertainment attorney. Broadcast Consultant.
Manager On-air operations MTV networks, New York, 1981-1992.
Vice President, Caribbean Satellite Network Miami, 1992-1994.

PAYOLA IS MORE RAMPANT THAN EVER. It occurs thousands of times each and every day. Everyone in the business (except FCC) has known about this for years! Every time a song gets played at a commercial station, a "promotion account" is debited and the station gets paid in a disguised manner.

FCC should prohibit any payments from anybody that does music research, or makes programming suggestions.

If an artist does a free concert for a radio station, either for a charity or not, the FCC should ABSOLUTELY consider that a form of payola. The amount of the payola is equal to their "going rate" for concerts at similar venues. This is both payola AND extortion, wherein the station twists the artists' arm to perform or they give NO AIRPLAY to the artists' new songs.

Record labels should NOT be allowed to buy ad spots on stations to play their band's songs as an announced ad? This is just LEGALIZING PAYOLA. It's bad enough that LABELS ALREADY do buy ad spots on stations to play their band's songs as an UN-announced ads - It's called MTV. Look it up sometime.

It is time for the Commission to act on the pay for play issue. The Commission must continue its efforts to learn how music is selected for programming, what percentage of music played comes from the independent or local sectors, and how much crossover exists between stations programming similar formats within the same station group in different markets. The FCC should take immediate action to confront the ongoing and insidious practice of pay for play by issuing specific rules that forbid particular kinds of behavior. Because play for pay practices have a history of mutating, the Commission's new rules should be broad and flexible enough to adapt to changes in industry practices. We agree with commenters that the Enforcement Bureau has the authority to clean up this industry practice; if the Commission believes that the new practices do not meet their current statutory authority, we encourage the Commission to request broader authority from Congress.

V. VOICE-TRACKING IS SEEN AS DISHONEST

Voice-tracking refers to a technology used by station groups whereby live and local broadcasts are replaced with airshifts pre-recorded in remote locations.

In its comments, Clear Channel states that it employs voice-tracking only to provide services to small and rural markets that otherwise might not be financially or geographically positioned to obtain talent.⁵ Recording Artist Groups challenge this statement. In their joint comments, AFTRA and AFM state that voice tracking does not import big name talent into smaller markets; rather, it imports cheaper announcers from smaller markets into larger markets, including all of the top three markets at one time or another.⁶

Voice-tracking has not only resulted in the loss of hundreds of disc jockey and announcer jobs at stations nationwide,⁷ but in many communities, there are stations programmed completely with voice-tracked or automated material with no local personnel at all.⁸ The end result is undeniable – no local flavor, no local input, no local jobs, no local coverage and no local connection. It is axiomatic that these practices do not serve local communities.

⁵ Comments of Clear Channel Communications, pp. 32-33.

Comments of National Association of Broadcasters, pp. 54-55.

⁶ Comments of AFTRA and AFM, pp.15-16.

⁷ Voice-tracking has resulted in the loss of jobs at Westwood One in Los Angeles, California, at KIHT in St. Louis, Mo., and in countless other smaller markets where Clear Channel has replaced live and local radio with automated or voice-tracked programming.

⁸ In Miami, for example, there are stations such as Party 93, where all local staff have been terminated and all shifts are now filled by voice tracked programming originating in other cities.

Comments filed by on-air talent and musicians in this proceeding reinforce citizens' concerns about this practice:

Frank Lee – Lindon, UT
Musician

Voice tracking or any practice which can mis-lead audiences about the source or intent of the broadcast should be prohibited. Voice tracking with adequate notice on-air to the public about the fact that it is not live should be permitted, and the market should be allowed to decide if it wishes to patronize that station.

Dana Ivey – New York, NY

Voice tracking is NOT a reasonable practice. It is inconsistent with a broadcaster's obligation to serve the public and local interests. Voice tracking was developed by corporations to increase profit and for no other reason. Corporations or big businesses have no desire to really serve the community, only to make a profit. Free airwaves are meant to serve a community, not make corporations rich. It is a gross misrepresentation to broadcast something and to deliberately mislead the listeners about the location of the broadcaster. One of the main things wrong with voice tracking is that local employees are fired or dismissed in favor of this distant technology. People are necessary for local operation and for service to a community to be successful.

Jerome Wells – Bala Cynwyd, PA
On-air talent

I voice track for my own local station. I've been doing this since 2001, when our production people from the 6 stations in our cluster were told at a meeting that the various stations' overnight announcers were being let go and that those air shifts would be our responsibility. Further, voice tracking had been specifically excluded from the terms of our contract (which was adopted before the practice came into use at our station) We were misled about how voice tracking was to be used. We were told that it was for vacations and days off only, and for weekday jocks to record weekend shows. We're presently engaged in contract negotiations

and have been warned not to "shoot ourselves in the foot" by insisting that pay for voicetracking be addressed in our upcoming contract. Sound like a threat to you? It sure does to me! The disadvantages to the listener are obvious! The FCC should ban it or at least insist that voicetracked shows be identified as such frequently during the broadcast.

Joel Clyde – Chatsworth, GA
Former radio DJ, performing songwriter and musician

I have been a victim many times of Voice-Tracking when I was a DJ. It has cost me several thousand dollars in lost income, prestige and contributed greatly to my decision to leave the Radio Broadcasting field completely in the mid 1990s. Voice-Tracking should be illegal except in the most extreme circumstances. It costs jobs and lost income, and does not serve the local publics interest in any way. It's just a way for a station to get more work and pay out less money. If a broadcast is pre-recorded, that fact should have to be announced on the air, several times during the broadcast, and on every break. Sponsors should get discounted ad rates for spots during a pre-recorded segment.

There is obviously a value to making national programming available. Radio is all the richer for its history of syndicated national radio shows. But local communities are not well served by radio shows that are built on deception – that are programmed specifically to sound local, even when they're not.

The Commission should weigh the benefits and costs of voice-tracking. Clearly there is an economic benefit for the radio stations that employ the practice, but at what cost?

Radio that is "live and local" – both in the sense of employing local DJs and of playing local music – has an inherent, fundamental value to local communities, and should not be sacrificed for the sake of cost savings.

VI. COMMISSION MUST HAVE ACCESS TO BETTER DATA

The Commission must adopt new standards by which it evaluates and measures the performance of stations under license. This includes requiring a station – as part of its licensing obligations – to routinely provide the Commission with data about how the station makes its programming decisions, playlist data, and advertising spot load and PSA data.

The Commission should also apportion money from its budget to have consistent access to the rich array of commercial data that is widely used by the music and radio industries to analyze their own marketplace. Not requiring or having access to this data puts the Commission at a serious disadvantage when it needs to understand the working nature of the commercial radio industry, and forces it to the Commission to rely on comments filed in proceedings and public hearings for evaluation.

Recording Artist Groups urge the Commission to subscribe to the same databases that the music and radio industry uses for their own performance evaluation including:

BIAfn's Media Access Pro database: provides specific and detailed information about over 14,000 commercial and noncommercial radio stations including ownership, management, format, revenue, listenership, rankings, performance, as well as its history of mergers and acquisitions.⁹

Nielsen BDS (Broadcast Data Systems): Using a digital pattern recognition technology, Nielsen BDS captures over 100 million song detections annually on more than 1,200 radio stations in over 130 markets in the U.S. (including Puerto

⁹ <http://www.bia.com/mediaaccesspro.asp>

Rico) and 22 Canadian markets. Used widely by record labels and radio stations, BDS data is also used to create the Billboard airplay charts.¹⁰

Mediabase: similar to BDS, but the tracking is conducted by individuals instead of computers. Mediabase data is used to create Radio and Records charts.¹¹

CMJ (College Music Journal): is the source for charts from college stations, which are primarily noncommercial.¹²

The Commission would benefit greatly from conducting regular analyses of its licensees to understand how they, in general, are serving their local communities. Having regular access to data, both from the stations themselves and from commercial database systems is essential to this process.

VII. THE FUTURE: LPFM and DAB

At the same time that the FCC continues its effort to learn more about the realities of the radio marketplace, it is critical for the Commission to be thoughtful about applying any lessons learned to policy decisions regarding other proceedings, including media ownership rules, Low Power FM and DAB. As we have previously commented, we believe the radio ownership rules have created a situation where local, independent stations are unable to compete against national chains, thus limiting the core principles of localism, competition and diversity. The policy agenda must focus on reining in huge conglomerates, not providing further unnecessary regulatory relief.

¹⁰ <http://www.bdsnline.com/products.html>

¹¹ Note that Mediabase is owned by Premiere Radio Networks, which is a Clear Channel company.

¹² <http://www.cmj.com>

We urge the Commission to not only remain resolute in its commitment to localism in traditional commercial and noncommercial broadcasting, we also urge you to strengthen your commitment to the expansion of Low Power FM. The wild success of LPFM indicates just how much citizens, organizations, churches and community groups want a positive, empowering local alternative to commercial media. We applaud the FCC for implementing this service and encourage the Commission to enact policies that expand and strengthen this service, especially into more urban markets.

Citizen commenters resoundingly support the expansion of LPFM:

Charles Szabla – Seven Hills, OH
Programmer and DJ at college radio station WRUW

Concerning low power FM I say MORE MORE MORE! Encourage and promote it any way the FCC can. Instead of finding ways to constrain and control broadcasting, focus on the positive aspects of radio broadcasting specifically low power FM. That is true democracy in action!

Alex Kashevaroff – Lake Worth, FL
Songwriter and performer

I once hosted a radio program for a small LPFM station in Berkeley, California. It was a hit show in the community, and benefitted a lot of artists in the community. LPFM stations are a definite step in the right direction towards reclaiming our local control of airwaves, and rebuilding real community for purposes other than strictly profit. I would like to see a lot more LPFM licenses, especially in more populated areas. I would tend to listen to these, well above the normal corporate drivel. I think that LPFM stations could benefit not only the music community, but the whole community, as other artists, personalities, and community concerns can be heard again, and feel a part of life here in the community.

Justin Evans – Los Angeles, CA
Student DJ and station manager, KUSC (college radio)

Low power FM allows a radio station to reach an immediate community. This could potentially be very interesting, especially in Los Angeles. There are hundreds of communities and subdivisions in greater Los Angeles, all getting fed the same content from all the major radio stations. Los Angeles is such a saturated market, that if you're not currently one of the big dogs - then you will never get heard. FM licenses can go in the tens to hundreds of millions of dollars. That makes it quite difficult for a fringe radio station to get into business. Low power FM allows fringe music to be heard by the people who want to hear it! Not only that, but LPFM stations can provide unmatched local content - specific to its own immediate community (colleges, chinatown, south central, beach communities, etc).

Finally, we believe that DAB presents a historic opportunity to revitalize radio as a local medium truly serving the interests of the public – but the FCC is heading down a policy path that will reinforce the dominant power of the incumbents. In prior comments and reply comments,¹³ members of the Recording Artist Groups have expressed our strong support for DAB, but have urged the Commission to delay rollout until Congress has had a chance to enact a full performance right. We must ensure that this technology recognizes the value of the creators and performers. It is critical that DAB be established as a licensed digital service, in line with other services like satellite radio and webcasting under which both songwriters and performers receive a performance royalty.

However, competition from new technologies such as LPFM, DAB, satellite radio or webcasting should not be relied upon as a justification for further deregulation of broadcast licensees. To the contrary, while increased competition may force long-

¹³ Reply Comments of Recording Artist Groups in Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service MM Docket 99-325, filed August 2, 2004

overdue responses to the concerns of local artists and listeners, broadcast licensees must continue to be held to the standards of localism, competition, and diversity incumbent on them as entities that utilize scarce public airwaves that are inherently invasive.

VIII. CONCLUSION

Recording Artist Groups thank the Commission for issuing this Notice of Inquiry into Localism in Broadcasting. We urge the Commission to respond to this NOI in six ways:

1. The Commission must adopt a meaningful and effective license renewal process through which the Commission, with input by members of the local community, systematically evaluates the manner in which a station has served the public interest through local programming.
2. The Commission must adopt rules that specifically address and prohibit the new destructive payola practices that control the radio and music industries today, and improve its existing procedures for enforcing existing payola and sponsorship identification rules.
3. The Commission must adopt new standards by which it evaluates and measures the performance of stations under license. This includes requiring stations to provide the Commission with data about how the station makes its programming decisions, playlist data, and advertising spot load and PSA data. The Commission should also subscribe to the same commercial databases that the music and radio industries use to evaluate their own performance.

4. The Commission must encourage the development of low power FM stations in more populated areas.
5. The Commission must continue to view radio's transition to digital audio broadcasting as an opportunity to recapture the inherent value of broadcast radio by requiring incumbent licensees to expand access, to increase the number of diverse voices on the air, and to meet local communities' needs. The transition to DAB must also include the creation of a blanket performance license so that performers and songwriters are compensated for airplay.
6. The Commission simply must reconsider the threat to localism inherent in its loosened media ownership rules now enjoined by the Third Circuit,¹⁴ and reverse its ill-advised effort to permit even more ownership consolidation.

We thank the Commission for providing Recording Artist Groups with an opportunity to file reply comments on this important issue. We look forward to participating in any steps to ensure that terrestrial radio serves local communities and that digital radio is developed and regulated in a way that supports and rewards recording artists, copyright owners and citizens.

Respectfully submitted,

_____/s/_____
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¹⁴ *Prometheus Radio Project v. FCC*, 373 F.3d 372, 2004 U.S. App. LEXIS 12720, June 24, 2004.

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